

1 STATE OF CALIFORNIA)
2 COUNTY OF LOS ANGELES) ss.

CONFIDENTIAL

3
4 DECLARATION OF GRANT B. COOPER

5
6 I
7 My name is Grant B. Cooper; I am an attorney duly licensed to
8 practice before all of the Courts of the State of California, and have been
9 since the year 1927.

10
11 II

12 I was associated with Russell Parsons, Esquire, of the California
13 Bar and Emile Zola Berman, Esquire, of the New York Bar in 1968-1969
14 in the defense of Sirhan Bishara Sirhan who was being tried for and was
15 subsequently convicted of the assassination of United States Senator Robert F.
16 Kennedy in the Hotel Ambassador in Los Angeles on June 4-5, 1968.

17
18 III

19 I have read that decision of the Supreme Court of California in
20 People v. Sirhan, reported at 7 Cal.3d 710 (1972), and in regard to that
21 decision and to the trial itself, I can make the following statements and, if
22 called as a witness, I would testify to all that follows:

23 (1) I did not become attorney of record nor did I interview
24 Sirhan Sirhan until early in December, 1968, approximately six months
25 after the incident at the Ambassador Hotel;

26 (2) My preparation for the trial of this case consisted, in part,
27 of the following:

28 (a) Reading of the Grand Jury transcript;

1 (b) Extensive interviews with Sirhan alone; with associate
2 Counsel; with psychiatrists; and under hypnosis by psychiatrist Dr. Bernard
3 Diamond;

4 (c) Extensive interviews with defense psychiatrists and
5 psychologists;

6 (d) Reading and studying statements and synopses of statements
7 of all the purported prosecution witnesses, including F.B.I reports of
8 witnesses in the possession of the District Attorney;

9 (e) Reading and studying voluminous reports of defense
10 investigators;

11 (f) A joint conference with all of defense psychiatrists and
12 psychologists and prosecution psychiatrists;

13 (g) Conferred with the defense investigators and with Russell
14 Parsons, Esquire, who alone had represented Sirhan from June through
15 December, 1968;

16 (3) Prior to becoming Sirhan's counsel, I read newspaper
17 accounts, saw television accounts and heard radio accounts of the incident;

18 (4) In none of this study and investigation was there any evidence
19 to indicate that any person in the Ambassador Hotel pantry other than Sirhan
20 fired a gun at or about the time Senator Kennedy was shot. In my preparation
21 for trial, therefore, I proceeded under the assumption that Sirhan alone
22 fired the shot or shots that killed Senator Kennedy. Notwithstanding the
23 foregoing, my associates and I did not rule out the possibility that he might
24 have had a confederate or confederates or that he might have been paid or
25 otherwise engaged by someone else to kill the Senator. Sirhan himself at
26 all times, under searching examination by me prior to trial, iterated and
27 reiterated that he never had a confederate of any kind or character, nor was
28 he a member of any conspiracy.

1 My associates and I, as a result of our complete investi-
2 gation and preparation for trial came to the conclusion that Sirhan solely
3 and alone and unassisted directly or indirectly by anyone, killed Senator
4 Kennedy.

6 IV

7 A material element of the prosecution's case was: Did the bullet
8 or bullets that killed Senator Kennedy come from the gun held in the hand of
9 Sirhan Sirhan.

10 DeWayne Wolfer, the prosecution criminalist, testified under
11 oath that he, DeWayne Wolfer, had fired the alleged death weapon taken
12 from Sirhan on the night of the homicide eight times, recovered seven of
13 the bullets from the water tank test chamber, had compared these slugs
14 with a ballistic microscope with the slug removed from the sixth cervical
15 vertebrae area of Senator Kennedy following the June 6, 1968 autopsy and
16 formed the conclusion that the "Sirhan death weapon and no other gun in
17 the world fired the fatal shot that killed Senator Kennedy." Wolfer so
18 testified under oath at the June 7, 1968 convening of the Los Angeles County
19 Grand Jury which eventually indicted Sirhan Sirhan for the killing of
20 Senator Robert F. Kennedy.

21 Because DeWayne Wolfer's testimony under oath corroborated the
22 facts learned through my investigation and preparation, I did not retain
23 an independent ballistics expert to analyze the slugs removed from the
24 deceased's body. Had I any feeling that in a case of this importance, Mr.
25 Wolfer either wilfully falsified his ballistics analysis or negligently,
26 improperly or otherwise arrived at his conclusions, I would have had an
27 independent ballistics expert or experts study the bullets. Because of my
28 firm belief that Sirhan alone fired the shots and that Mr. Wolfer was

1 testifying correctly under oath. I did not have the bullets independently
2 analyzed.

3 4 IV

5 Because of my belief that Sirhan performed the assassination
6 independently, solely and unassisted, my defense was never directed toward
7 the defense that Sirhan did not fire the shots. The defense acknowledged
8 in opening statements to the jury that Sirhan was the lone perpetrator and
9 the sole issue was the degree of the homicide because of Sirhan's
10 "diminished capacity." Had I any inkling or belief that Sirhan had not
11 acted alone or not fired the fatal shot, it is obvious that our entire investi-
12 gation would have been wholly reoriented. Indeed, I offered, prior to trial,
13 to the prosecution to stipulate to the ballistics' testimony and other
14 prosecution testimony such as the handwriting in the "diaries" seized from
15 the bedroom of Sirhan was Sirhan's handwriting but was advised that the
16 prosecution preferred to establish these facts and opinions in open Court.

17 Additionally, because of my sincere belief that Sirhan alone fired
18 the shots, my associates and I offered to plead Sirhan guilty to the crime
19 of First Degree Murder provided the Court would impose a term of life
20 imprisonment instead of death. Sirhan personally joined in this offer on the
21 record, as did the prosecution. The Honorable Herbert Walker, Judge
22 Presiding, denied this proffer for the reasons stated by him on the record.

23 This offer to plead Sirhan guilty to First Degree Murder (life
24 imprisonment) was proffered, notwithstanding all of defense counsel and
25 Dr. Bernard Diamond, psychiatrist, were of the firm opinion that Sirhan's
26 diminished capacity justified a verdict of Second Degree Murder, even the
27 possibility of Manslaughter. The combined experience of defense counsel
28 in the trial of homicide cases led us to the conclusion, considering the

1 totality of the circumstances and the possibility of a death penalty verdict,
2 that a plea of first degree (life imprisonment) would be a wise and just
3 compromise.
4

5 V

6 I had innumerable consultations during trial preparation with
7 all the defense psychiatrists and particularly with Dr. Bernard Diamond,
8 M. D., a psychiatrist of the University of California, and Dr. Seymour
9 Pollack, psychiatrist of the University of Southern California School of
10 Medicine. Both Dr. Diamond and Dr. Pollack were skilled in hypnosis,
11 which they used in their profession as a diagnostic tool. During their
12 study of Sirhan, Dr. Diamond hypnotized Sirhan alone and in my presence
13 and interrogated him attempting to lead him through the events of the past
14 up through the actual minutes of the assassination. During all of these
15 medical techniques, although questions were put to Sirhan by the psychia-
16 trists in an attempt to determine whether Sirhan committed the crime solely
17 and alone or in concert with another or others, all of the psychiatrists
18 assumed, as did my associates and I, that Sirhan alone fired the shots
19 that caused Senator Kennedy's death.

20 If is of course medically impossible for me to comment on what
21 substitute directions Doctors Diamond and Pollack or the other psychiatrists
22 would have taken had there been a question as to whether Sirhan or someone
23 else fired the actual shot or shots. However, I am of the opinion that this
24 specific information would have affected the nature and direction of the
25 questions propounded by me to Sirhan on direct examination and the nature
26 and character of the psychiatrists' investigation and the nature and
27 character of their subsequent testimony.
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VI

It is my distinct belief, and I can unequivocally state that had there been any information available to the defense that Sirhan had not actually fired the shots into Senator Kennedy, my approach to his defense would have been materially altered. While I cannot now, as I look back, determine exactly what my ultimate judgment would have been, I would have had to consider the following:

(1) Would it be defense counsel's duty to have contended that because Sirhan did not fire the shot or shots that killed the Senator that he was entirely not guilty;

(2) To what extent would such an inconsistent defense, i. e., not guilty, militate against what I conceived the meritorious defense of diminished capacity, particularly when defense counsel had to consider the number of alleged eyewitnesses, the entries in the "diaries", the admissions made by Sirhan to defense counsel, his admissions made during hypnosis and the "climate" engendered by the publicity and the prominence of the deceased;

(3) I can state that I would have deemed it defense counsel's duty to have cross-examined DeWayne Wolfer at length, using as a basis for such cross-examination the fact that the bullet or bullets that killed the Senator did not come from Sirhan's gun and to have cross-examined the eyewitnesses to develop facts consistent with this theory. On the many occasions I conferred with Sirhan preparing him for his direct examination at the trial, Sirhan at all times stated he could not remember the killing nor remember firing the shots. Because of my firm and conscientious belief that Sirhan alone fired the shots, engendered among other reasons by his re-enactment of the shooting under hypnosis by Dr. Diamond in my presence, I advised Sirhan to testify in substance that notwithstanding his

1 lack of memory, that if everyone said he did fire the shots he must have
2 done so. Sirhan followed my advice and so testified. I can state that
3 with this information, I could not have advised Sirhan to testify that not-
4 withstanding he had no recollection of actually firing the gun, that it must
5 have been he that fired the shots that killed the Senator;

6 (4) With evidence that the shot that killed the Senator came
7 from a gun other than Sirhan's, the thrust of the defense investigation would
8 have been directed toward attempting to establish the identity of the person or
9 persons, other than Sirhan, that did kill the Senator. The assistance of
10 the prosecution might well have been sought to assist in this endeavor;

11 (5) The eyewitnesses would have been cross-examined in
12 minute detail as to positions, distances, ability to perceive under excite-
13 ment, et cetera. None of this type of investigation was followed nor was any
14 direct or cross-examination of this type pursued because of my firm belief,
15 concurred in by my associates, that all of the evidence on hand prior to
16 and during the trial was that Sirhan alone fired the shots that killed Senator
17 Kennedy.

18 In making this declaration, I have consulted with Attorney Roger S.
19 Hanson, counsel of record for the contemplated Petition for a Writ of Habeas
20 Corpus and I have heretofore conferred with the ballistics expert, William W.
21 Harper, who has studied the ballistics evidence in this case. It has been
22 called to my attention that a diagram and illustrations are being set forth
23 in this Petition for the Writ at pages , showing a composite
24 of all the trial testimony on the several feet distance which always existed
25 between Senator Kennedy and Sirhan and which I am informed clearly shows
26 that no witness produced at the trial placed Sirhan within the requisite one
27 to three inches in order to effectuate the tattooing powder burns on Senator
28 Kennedy's right mastoid process as well as the two other body wounds in his

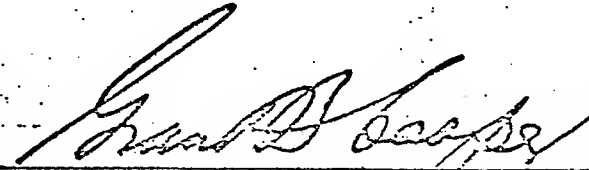
1 mid-right back area.

2 In spite of this testimony, I was so convinced, as were my
3 associates, by pretrial investigation, preparation and indoctrination that
4 Sirhan had alone performed the killing that I did not seek in any way to
5 challenge the theory of the prosecution on the foregoing gross physical
6 discrepancies and evidential contradictions.

7 I have complete confidence in the ability and integrity of William
8 W. Harper. In fact, long after the trial when some of these facts and
9 theories were called to my attention and when I was no longer Sirhan's
10 counsel, I recommended Mr. Harper to those pursuing these avenues of
11 this investigation. I am of the opinion that Mr. Harper's facts and opinions
12 have merit and are deserving of further investigation to determine the truth
13 and should there be an injustice in Sirhan's conviction, that it be
14 corrected.

15 Further declarant saith not.

16 I declare the foregoing to be true under the penalty of perjury
17 this 3rd day of November, 1972.

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20 GRANT B. COOPER
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